

University of Michigan Journal of Law Reform

Volume 26

1993

Front Matter

Journal of Law Reform

Follow this and additional works at: <https://repository.law.umich.edu/mjlr>

Recommended Citation

Journal of Law Reform, *Front Matter*, 26 U. MICH. J. L. REFORM i (1993).

Available at: <https://repository.law.umich.edu/mjlr/vol26/iss2/1>

This Front Matter is brought to you for free and open access by the University of Michigan Journal of Law Reform at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in University of Michigan Journal of Law Reform by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

UNIVERSITY OF MICHIGAN JOURNAL OF LAW REFORM



VOLUME 26
ISSUE 2
WINTER 1993

UNIVERSITY OF MICHIGAN
LAW SCHOOL
ANN ARBOR, MICHIGAN

Cite as: 26 U. MICH. J.L. REF. ____ (1993).

Copyright © 1993 by the *University of Michigan Journal of Law Reform*. All rights reserved. Except where otherwise expressly indicated, copies of scholarship printed in the *University of Michigan Journal of Law Reform* may be made for course use in any public or private institution of learning provided that (1) copies are distributed at or below cost, (2) the author and the *University of Michigan Journal of Law Reform* are identified on the copies, and (3) proper notice of copyright is affixed to each copy.

The *University of Michigan Journal of Law Reform* is published quarterly by students of the University of Michigan Law School. Fourth-class postage paid at Ann Arbor, Michigan 48106. Printed by Joe Christensen, Inc., Lincoln, Nebraska 68521.

University of Michigan Journal of Law Reform
University of Michigan Law School
Ann Arbor, MI 48109-1215
Telephone: (313) 763-6100

PUBLICATION POLICY

The *Journal* seeks to improve the law and its administration by providing a forum for discussion that identifies contemporary issues for reform efforts, proposes concrete means to accomplish change, and evaluates the impact of law reform. As contributions to this discussion, the *Journal* also welcomes multidisciplinary and empirical work.

We encourage the submission of unsolicited manuscripts for publication. Each manuscript should be typed double-spaced and sent to the Article Editors at the above address. Articles should generally conform to *A Uniform System of Citation* (15th ed. 1991) and *The Chicago Manual of Style* (13th ed. 1982). The *Journal* encourages authors to use gender-neutral language in their scholarly work. We regret that we cannot return submitted articles unless they are accompanied by a self-addressed postage-paid envelope.

Views expressed in the *Journal* are those of the author and not necessarily those of the editorial staff.

SUBSCRIPTIONS

The subscription rate for Volume 26 is \$28.00 domestic and \$31.00 foreign. All subscription inquiries should be made, by mail or phone as stated above, to the Business Manager. Subscribers should report the nonreceipt of copies within six months of the mailing date.

INDIVIDUAL AND BACK ISSUES

Copies of individual issues from the current volume can be obtained directly from the *Journal* for \$8.00 each. The following Special Issue is available for \$20.00 (Symposium: Preservation of Minority Cultures 25:3&4).

Back issues in complete sets, volumes, or single issues can be obtained from William S. Hein & Co., Inc., 1285 Main Street, Buffalo, New York 14209 — Telephone (716) 882-2600. The *Journal* is also available on microfilm through University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106 — Telephone (313) 761-4700.

INDEXES

The *Journal* is indexed in the Current Law Index, Index to Legal Periodicals, Legal Resource Index, and PAIS Bulletin.

ISSN 0033-1546

UNIVERSITY OF MICHIGAN JOURNAL OF LAW REFORM

VOLUME 26
ISSUE 2
WINTER 1993

CONTENTS

ARTICLES

- The Challenge of Indigenous Self-Determination
Russel Lawrence Barsh 277
- Public Employees' Right to Strike: Law and Experience
Martin H. Malin 313
- Filling an Enforcement Void: Using Testers to
Uncover and Remedy Discrimination in Hiring for
Lower-Skilled, Entry-Level Jobs
Michael J. Yelnosky 403

NOTE

- A Failure of Communication: An Argument
for the Closing of the NYSE Floor
Gerald T. Nowak 485

UNIVERSITY OF MICHIGAN LAW SCHOOL

Administrative Officers

JAMES J. DUDERSTADT, M.S., Ph.D., *President of the University*
 GILBERT R. WHITAKER, JR., M.S., Ph.D., *Provost and Vice President for Academic Affairs*
 LEE C. BOLLINGER, B.S., J.D., *Dean*
 EDWARD H. COOPER, A.B., LL.B., *Associate Dean for Academic Affairs*
 SUSAN M. EKLUND, A.B., J.D., *Associate Dean for Student Affairs and Operations*
 BEVERLEY J. POOLEY, B.A., LL.B., LL.M., S.J.D., *Associate Dean for the Law Library*
 VIRGINIA B. GORDAN, B.A., J.D., *Assistant Dean for Student Affairs*
 ANNE P. KNOTT, B.S., M.A.T., *Assistant Dean for Capital Campaign*
 JONATHAN D. LOWE, B.A., J.D., *Assistant Dean for Law School Relations*
 DENNIS J. SHIELDS, B.A., J.D., *Assistant Dean and Admissions Officer*

Professors Emeriti of Law

FRANCIS A. ALLEN, A.B., LL.B., J.D., LL.D.,
Edson R. Sunderland Professor of Law
 OLIN L. BROWDER, JR., A.B., LL.B., S.J.D.,
James V. Campbell Professor of Law
 ALFRED F. CONARD, A.B., LL.B., LL.M., J.S.D., LL.D.
Henry M. Butzel Professor of Law
 LUKE K. COOPERRIDER, B.S., J.D.
 ROGER A. CUNNINGHAM, S.B., J.D.,
James V. Campbell Professor of Law
 SAMUEL D. ESTEP, A.B., J.D.
 ROBEN W. FLEMING, B.A., LL.B., LL.D.
 CHARLES W. JOINER, A.B., J.D.
 FRANK R. KENNEDY, A.B., LL.B., J.S.D.,
Thomas M. Cooley Professor of Law
 MARVIN L. NIEHUSS, A.B., LL.B.
 GEORGE E. PALMER, A.B., J.D., LL.M.
 WILLIAM J. PIERCE, A.B., J.D.
 ROY F. PROFFITT, B.S., J.D., LL.M.
 JOHN W. REED, A.B., LL.B., LL.M., JUR.Sc.D.,
Thomas M. Cooley Professor of Law
 ALLAN F. SMITH, A.B., LL.B., LL.M., S.J.D.
 RUSSELL A. SMITH, A.B., J.D.
 ERIC STEIN, J.U.D., J.D., Dr.H.C., Dr.H.C.,
Hessel E. Yntema Professor of Law
 PETER O. STEINER, A.B., M.A., Ph.D.
 ANDREW S. WATSON, B.S., M.D., M.S. IN MED.

Professors of Law

T. ALEXANDER ALEINIKOFF, B.A., J.D.
 LAYMAN E. ALLEN, A.B., M.P.A., LL.B.
 LEE C. BOLLINGER, B.S., J.D.
 MICHAEL H. BRADLEY, M.B.A., Ph.D.
 DAVID L. CHAMBERS, ** A.B., LL.B.,
Wade H. McCree Professor of Law
 EDWARD H. COOPER, A.B., LL.B.,
Thomas M. Cooley Professor of Law
 DONALD N. DUQUETTE, † B.A., J.D.
 REBECCA S. EISENBERG, B.A., J.D.
 PHOEBE C. ELLSWORTH, A.B., Ph.D.
 MERRITT B. FOX, B.A., J.D., Ph.D.
 RICHARD D. FRIEDMAN, B.A., J.D., D.Phil.
 BRUCE W. FRIER, ** B.A., Ph.D.
 WHITMORE GRAY, ** A.B., J.D., LL.D.,
 THOMAS A. GREEN, ** B.A., Ph.D., J.D.,
John Philip Dawson Professor of Law
 SAMUEL R. GROSS, A.B., J.D.
 DONALD J. HERZOG, A.B., A.M., Ph.D.
 JEROLD H. ISRAEL, ** B.B.A., LL.B.,
Alene and Allan F. Smith Professor of Law
 JOHN H. JACKSON, ** B.A., J.D.,
Hessel E. Yntema Professor of Law
 DOUGLAS A. KAHN, B.A., J.D.,
Paul G. Kauper Professor of Law
 YALE KAMISAR, ** A.B., LL.B., LL.D.,
Clarence Darrow Distinguished University Professor of Law
 THOMAS E. KAUPER, ** A.B., J.D.,
Henry M. Butzel Professor of Law
 LARRY B. KRAMER, A.B., J.D.
 C. DOUGLAS KRANWINKLE, * B.A., J.D.
 JAMES E. KRIER, ** B.S., J.D.,
Earl Warren DeLano Professor of Law
 JEFFREY S. LEHMAN, A.B., J.D., M.P.P.
 RICHARD O. LEMPERT, ** A.B., J.D., Ph.D.
Francis A. Allen Professor of Law
 CATHARINE A. MACKINNON, B.A., J.D., Ph.D.
 WILLIAM I. MILLER, B.A., Ph.D., J.D.
 SALLYANNE PAYTON, A.B., LL.B.
 BEVERLEY J. POOLEY, B.A., LL.B., LL.M., S.J.D.
 DONALD H. REGAN, ** A.B., LL.B., B.Phil., Ph.D.,
William W. Bishop, Jr. Professor of Law
 MATHIAS W. REIMANN, Dr. IUR., LL.M.
 PAUL D. REINGOLD, † B.A., J.D.
 THEODORE J. ST. ANTOINE, A.B., J.D.,
James E. and Sarah A. Degan Professor of Law
 TERRANCE SANDALOW, A.B., J.D.,
Edson R. Sunderland Professor of Law
 CARL E. SCHNEIDER, A.B., J.D.
 ROBERT A. SEDLER, * A.B., J.D.
 JOEL SELIGMAN, A.B., J.D.
 BRUNO SIMMA, ** J.D.
 A.W. BRIAN SIMPSON, B.A., M.A., D.C.L.
Charles F. and Edith J. Clyne Professor of Law
 PHILIP SOPER, B.A., M.A., J.D., Ph.D.
James V. Campbell Professor of Law
 KENT D. SYVERUD, B.S.F.S., J.D., M.A.
 MARK C. VAN PUTTEN, † B.A., J.D.
 JOSEPH VINING, ** B.A., M.A., J.D.,
Harry Burns Hutchins Professor of Law
 LAWRENCE W. WAGGONER, B.B.A., J.D., D.Phil.,
Lewis M. Simes Professor of Law
 JOSEPH WEILER, * B.A., LL.B., Ph.D., LL.M.
 PETER K. WESTEN, B.A., J.D.,
Frank G. Millard Professor of Law
 JAMES BOYD WHITE, ** A.B., A.M., LL.B.,
L. Hart Wright Professor of Law
 JAMES J. WHITE, B.A., J.D.,
Robert A. Sullivan Professor of Law
 PATRICIA D. WHITE, * B.A., J.D., M.A.
 CHRISTINA B. WHITMAN, A.B., M.A., J.D.

Associate Professors of Law

KIM L. SCHEPPELE,† A.B., M.A., Ph.D.

Assistant Professors of Law

MARIE R. DEVENNEY,** B.A., M.A., J.D.
HEIDI L. FELDMAN, B.A., J.D.
JULIE M. FIELD,†† B.A., J.D.
RICHARD B. GINSBERG,†† B.A., J.D.
AVERY KATZ, B.A., M.A., J.D., Ph.D.
ROCHELLE E. LENTO,†† B.A., J.D.
DEBRA A. LIVINGSTON, A.B., J.D.

DEBORAH C. MALAMUD, B.A., J.D.
YVONNE E. MENA,†† B.A., J.D.
MARK D. MITSHKUN,†† B.A., J.D.
RICHARD H. PILDES, A.B., J.D.
NICHOLAS J. RINE,†† B.A., J.D.
SUELLYN SCARNECCHIA,†† B.A., J.D.
THEODORE M. SHAW, B.A., J.D.

Instructors in Law

MARGARET A. LEARY,† B.A., M.A., J.D.
ROBERTA J. MORRIS,† A.B., J.D., M.A. Ph.D.

JAMES B. SPETA,† B.A., J.D.
BARBARA H. VACCARO,† B.A., A.M.L.S., J.D.

Lecturers in Law

CHARLES W. BORGS DORF,† A.B., J.D.
E. JAMES GAMBLE,† A.B., J.D.
RODERIC M. GLOGOWER,† B.A., M.S., M.A.
ROBERT J. HARRIS,† B.A., M.S., M.A.

CYRIL MOSCOW,† A.B., J.D.
STEVEN D. PEPE,† B.A., J.D.
MARK D. ROSENBAUM,† B.A., J.D.
EDWARD R. STEIN,† B.A., J.D.

*Visiting

**On Leave

†Adjunct

††Clinical

Addendum: Professor Julianna J. Zekan would like to extend additional thanks to Professor Carl Felsenfeld, Fordham University School of Law for his assistance with her Article entitled *Comparative Negligence Under the Code: Protecting Negligent Banks Against Negligent Customers*, which appeared at 26 U. MICH. J.L. REF. 125 (1992). Professor Zekan would like the acknowledgement to the Article to read as follows:

I would like to express my sincere appreciation to Professor Neil B. Cohen, Brooklyn Law School; to Professor Norman Silber, Hofstra University School of Law; to Professor Carl Felsenfeld, Fordham University School of Law; and to Deborah Prutzman, Esq., a partner with Paul, Weiss, Rifkind, Wharton and Garrison, for their comments and insights.

UNIVERSITY OF MICHIGAN JOURNAL OF LAW REFORM



EDITORIAL BOARD

Volume 26

Editor in Chief
MARISA A. GÓMEZ

Managing Editor
MARK E. CRANE

Article Editors
NINA N. CHANG
KRISTINA M. ENTNER
WILLIAM S. KOSKI

Executive Note Editor
DAVID E. MORRISON

Executive Editors
MARCUS A. ASNER
MARY ANN HART
KATHRYN R. L. RAND

Note Editors
PHYLLIS H. HURWITZ
DAVID J. MACKINNON
EGDILIO J. MORALES
MICHAEL S. SCHIFFER

*Research &
Development Editor*
DAVID L. KASPER

Symposium Editor
PHYLLIS H. HURWITZ

Contributing Editors

BRADLEY D. ANDERSON
M. CONNER BALL
KEVIN J. BONNER
LIESEL E. BRAND

JAMIE C. HECHT
RAYMOND M. KETCHLEDGE
JORDAN E. KROLICK

LINDA A. POPOVICH
DOUGLASS M. RAYBURN
MARCIA WANE SPIESS
PHILIP STRATON STAMATAKOS

Associate Editors

JEFFREY D. ADELMAN
ANDREW N. ADLER
SANDRA R. AHN
JENNIFER BELL ANDERSON
JEFFREY C. BRAND
JEFFREY J. BROOKNER
JON ED BROWN
F. DOMINIC J. CIANCIOLO
KIMBERLY A. CLARKE
LESLIE W. CLINE
ANDREW S. COHEN
ANDREA L. CROWE
R. PATRICK DEWINE
NANCY L. ENGBERS
DANIEL M. FEENEY
KEITH R. FENTON
NOAH FINKEL
ERIN E. FLAHARTY

RICHARD E. FONTANA
KAREN M. GAFFKE
JEFFREY C. GERISH
MONICA NAVARRO-GIBERSON
HELENE T. GLOTZER
HALLIE B. GOLDMAN
OMAR J. HARB
PETER D. HARDY
DUNCAN P. HETTLE
RICK R. HSU
SHANNON L. HUBER
KAREN R. JENKINS
KARYN S. JOHNSON
BRIAN J. KELLY
GARETH W. KUHL
INA JULIEANNA KURCZ
WENDY ANN LEARMONT
BARBARA R. LENTZ

ANDREW C. LEVITT
EDDY CHING-LIANG MENG
LAURA C. MILLER
JEAN Y. PARK
MONA J. PATEL
ROB DYLAN PIESTER
NINA Y. RIVERA
JAMES E. ROACH
ELIZABETH M. ROSENFELD
MICHAEL S. RUSSELL
MARCY R. SHOOKS
MICHAEL D. SILVERMAN
PHILLIP J. SMITH
DAVID J. TESS
DEBORAH L. WALKER
JASON W. WILLIAMS
MARK C. WITT
MARGO A. WOLF

Business Manager
MAUREEN A. BISHOP

Editorial Assistants
CATHERINE T. LEGGIERI
JOYCE E. REESE